

██████████,
Complainant,

v.

MOUNT VERNON COMMUNITY SCHOOL CORPORATION,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred. 910 IAC 1-3-2(b)

On August 1, 2011, ██████████ ("Complainant") filed a complaint with the Commission against Mt. Vernon Community School Corporation ("Respondent") alleging race (African-American) discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. §2000e, et seq.) and the Indiana Civil Rights Law (IC 22-9, et seq.). Complainant is an employee and Respondent is an employer as those terms are defined by the Civil Rights Law. IC 22-9-1-3(h) and (i). Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was demoted based on his race. In order to prevail on such a claim, Complainant must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondents legitimate business expectations; and (4) employees of a different race were treated more favorably under similar circumstances.

Complainant clearly is a member of a protected class by virtue of his race, and it is undisputed that he suffered an adverse employment action when he was demoted on July 1, 2011. The only remaining questions are whether Complainant was meeting his employer's performance expectations or, if not; whether employees of a different race were treated more favorably.

Evidence indicates that budgetary considerations compelled Respondent to undertake several cost cutting measures in 2011, including the temporary closure of the Fortville Elementary School and the elimination of several jobs, including one (1) head custodial position and, among others, two (2) teaching positions. Respondent indicated that it selected Complainant as the one to be demoted because his attendance and his performance were both below par. However, there is reason to

believe this justification may be pretext for unlawful discrimination. Respondent submitted a Job Performance Evaluation for Complainant indicating some performance problems. This evaluation was neither signed by Complainant nor dated. Furthermore, Complainant denies receiving this evaluation and states that his last evaluation in 2010 was very good. Complainant was not given an opportunity to improve his performance, but was simply demoted.

While it is true that the evaluation of [REDACTED], the Caucasian employee who took Complainant's job as head custodian, was excellent, this evaluation was signed by Mr. Douglas and dated June 8, 2011, after the decision to demote Complainant had been made. Furthermore, the witness statement from one of Complainant's former janitors, indicating that Complainant was not a good supervisor, was dated August 23, 2011, after the filing of this complaint. It was not relied upon in making the decision to demote Complainant. Finally, Respondent's assertion that Complainant had attendance problems is belied by the fact that he was never counseled for such and was never accused of using leave time without approval. The leave time he took was his to use. Respondent asserts no violation of particular leave policies. These facts raise doubts as to the credibility of Respondent's proffered, non-discriminatory reason for Complainant's demotion.

Based upon the above findings, probable cause does exist to believe that an unlawful discriminatory practice occurred. A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. IC 22-9-1-18, 910 IAC 1-3-5 The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

January 23, 2011
Date

Joshua S. Brewster, Esq.,
Deputy Director
Indiana Civil Rights Commission